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11 Attorneys for Defendant,

SEAGATE TECHNOLOGY LLC

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

16 IN RE SEAGATE TECHNOLOGY LLC
LITIGATION

18 CONSOLIDATED ACTION

Case No. 3:16-cv-00523-JCS

**[PROPOSED] ORDER GRANTING
MOTION TO SEAL PORTIONS OF
PLAINTIFFS' SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION FOR CLASS
CERTIFICATION**

Date: May 11, 2018

Time: 9:30 a.m.

Place: Courtroom G

Judge: Hon. Joseph C. Spero

Second Consolidated Amended Complaint
filed: July 11, 2016

1 The Court has reviewed the Administrative Motion to File Documents Under Seal filed in
 2 connection with Plaintiffs' Supplemental Brief in Support of Class Certification and related
 3 documents. ECF No. 167. It has also reviewed the Declaration of Allen Ng filed by Seagate
 4 Technology LLC (Seagate) in Support of the Administrative Motion to Seal. The Court rules as
 5 follows:

6 A party seeking to seal filed documents must "(1) comply with Civil Local Rule 79-5; and
 7 (2) rebut the [] strong presumption in favor of access that applies to all documents other than
 8 grand jury transcripts or pre-indictment warrant materials." *Gaudin v. Saxon Mortg. Servs.*, No.
 9 11-cv-01663-JST, 2013 WL 2631074, at *1, 2 (N.D. Cal. June 11, 2013) (internal citations
 10 and quotations omitted).

11 First, the party seeking to seal the document must establish that (1) "the document or
 12 portions thereof is privileged or protectable as a trade secret or otherwise entitled to protection
 13 under the law; and (2) is narrowly tailored to seek sealing only of sealable material." *Id.* (citing
 14 Civil L.R. 79-5).

15 "With respect to the second prong, the showing required for overcoming the strong
 16 presumption of access depends on the type of motion to which the document is attached." *Id.*
 17 With regard to non-dispositive motions, the Ninth Circuit has "carved out an exception to the
 18 presumption of access to judicial records[.]" and those records may be filed under seal upon a
 19 showing of "good cause." *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686
 20 F.3d 1115, 1119 (9th Cir. 2012) (per curiam) (internal quotation marks and citation omitted);
 21 *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (applying "good cause" standard
 22 to all non-dispositive motions because such motions "are often unrelated, or only tangentially
 23 related, to the underlying cause of action") (internal quotation marks and citation omitted). "[T]he
 24 vast majority of other courts within this circuit" apply the "good cause" standard to sealing
 25 documents filed in connection with a Motion for Class Certification. *See In re High-Tech Emp.*
 26 *Antitrust Litig.*, No. 5:11-cv-02509-LHK, 2013 WL 5486230, at *2 n.1 (N.D. Cal. Sept. 30, 2013)
 27 (collecting cases); *Gaudin*, 2013 WL 2631074, at *2 (same); *Dugan v. Lloyds TSB Bank, PLC*,
 28 No. 12-cv-02549-WHA (NJV), 2013 WL 1435223, at *1 (N.D. Cal. Apr. 9, 2013) ("Unless the

1 denial of a motion for class certification would constitute the death knell of a case, ‘the vast
2 majority of courts within this circuit’ treat motions for class certification as non-dispositive
3 standard applies”) (internal formatting omitted).

4 The confidential information proposed to be filed under seal satisfies this two-part test.
5 First, the requested portions to be sealed are narrowly tailored to only portions of documents
6 “privileged or protectable as a trade secret or otherwise entitled to protection under the law.” L.R.
7 79-5(b). Second, good cause exists to protect Seagate’s sensitive business information from being
8 released to competitors or to the public.

9 **A. Seagate’s Documents Contain Trade Secrets**

10 The Ninth Circuit has adopted the definition of “trade secrets” set forth in the Restatement
11 of Torts, holding that “[a] trade secret may consist of any formula, pattern, device or compilation
12 of information which is used in one’s business, and which gives him an opportunity to obtain an
13 advantage over competitors who do not know or use it.” *In re High-Tech Emp. Antitrust Litig.*,
14 2013 WL 163779, at *1 (citing *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)). Generally,
15 a trade secret “relates to the production of good It may, however, relate to the sale of goods or
16 to other operations in the business” *Id.*; see also *Muench Photography, Inc. v. Pearson*
17 *Educ., Inc.*, No. 12-cv-01927-WHO, 2013 WL 01927, at *4-5 (N.D. Cal. Aug. 15, 2013) (sealing
18 document containing information relating to requesting party’s “product development efforts and
19 business strategies to competitors,” when “competitors could use these strategies themselves—
20 strategies that [the requesting party] spent significant resources to create”).

21 As explained in the Ng Declaration, the information sought to be sealed involves Seagate’s
22 internal drive testing and data. Ng Decl. ¶ 4. Thus, the information is sealable under Civil Local
23 Rule 79-5 as protectable trade secret information and/or otherwise protectable by law. See
24 *Gaudin*, 2013 WL 2631074, at *2.

25 **B. Good Cause Supports Seagate’s Request to Seal the Confidential Information**

26 There is also “good cause” to seal the requested information. *Gaudin*, 2013 WL 2631074,
27 at *2. Seagate takes considerable effort to ensure all of this information is kept from the public;
28 indeed, this information was only disclosed in this case pursuant to a stipulated Protective Order.

Ng Decl. ¶ 4. The information is also commercially sensitive and highly valuable to Seagate. *Id.* Should information regarding Seagate's product design, development, and testing become available to its competitors, it could be used to harm Seagate's "competitive standing." *Id.*; *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (sealing appropriate to prevent documents from being used to harm to litigant's competitive standing); *Muench Photography, Inc.*, 2013 WL 4475900, at *4-5.

GOOD CAUSE APPEARING THEREFOR, the Administrative Motion to Seal is GRANTED. The documents identified below shall remain filed under seal:

Document Filed Under Seal by Plaintiffs	Portion(s) Sought To Be Sealed
Exhibits to Declaration of Steve W. Berman in Further Support of Motion for Class Certification, ECF No. 167-5	Exhibits 58, 59, 61-71
Plaintiffs' Supplemental Brief in Support of Motion for Class Certification, ECF No. 167-3	Portions of MPA 2:20-21; 3:2-11, 17-26; 4:1-5, 9-17; 4:22-25; 5:1, 5-6, 13-16, 20, 22-23, 25; 6; 7:5-7, 9.

IT IS SO ORDERED.

DATED: _____, 2018

HON. JOSEPH C. SPERO
UNITED STATES MAGISTRATE JUDGE